

REMARKS

A. INTRODUCTION

Claims 5, 6, 29, 31-34, 36-41, and 43-63 are pending.

Claims 5, 6, 29, 34, and 41 are allowed.

Claims 1-4, 7-28, 30, 35, and 42 were previously cancelled.

Claims 51-63 were withdrawn.

Only Claims 31-33, 36-40, and 43-50 are rejected, and all the rejections were under appeal. Applicants are requesting under 37 CFR § 41.39(b)(1) that prosecution be reopened in light of the new grounds of rejection under Section 101 provided in the Examiner's Answer.

Upon entry of this Amendment:

- Claims 5, 6, 29, 31-33, 39-41, and 43-50 will be pending
- Claims 31-33, 39, 40, 43-46 and 49 will be amended
- Claims 34 and 36-38 will be cancelled without prejudice
- Claims 5, 29, 31-33, 39, 40, and 43-49 are independent

B. CLAIM AMENDMENTS

Claims 34 and 36-38 have been cancelled without prejudice.

Claims 31-33, 39, 40, 43-46 and 49 have been amended as discussed below. No new matter has been added.

C. SECTION 101 REJECTION

Claims 31-33, 36-38, 46-47 and 49-50 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse the Examiner's Section 101 rejection.

However, Claims 36-38 have been cancelled without prejudice by this Amendment.

Each of rejected independent Claims 31-33, 39, 40, 43-46 and 49 has been amended to provide generally for determining, by a controller, a sales price. Accordingly, those claims are tied to at least one particular apparatus.

Independent Claim 47 already provided generally for determining, by a controller, a sales price. Accordingly, Applicants respectfully traverse the Section 101 grounds of rejection for Claim 47, as that method claim already was tied to a

particular apparatus (i.e., the controller). Claim 47 has not been amended by this Amendment.

Applicants respectfully request the Examiner's reconsideration and withdrawal of the Section 101 rejection of Claims 31-33, 39, 40, 43-47 and 49.

D. SECTION 102(E) REJECTION AND SECTION 103(A) REJECTION

Claims 31-33, 36-40 and 43-48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tagawa (U.S. Patent No. 5,732,398). Applicants respectfully traverse the Examiner's Section 103(a) rejection.

Claims 49-50 stand rejected under 35 U.S.C. 102(e) was being anticipated by Tagawa. Applicants respectfully traverse the Examiner's Section 102(e) rejection.

Applicants' arguments traversing the Examiner's Section 102(e) and 103(a) rejections are included in the previously filed Appeal Brief, and incorporated by reference herein.

However, each of Claims 31-33, 39, 40, 43-45 and 49 has been amended to provide generally for determining (or establishing) a sale price based a (product) description comprises generating a measure of flexibility based on the description and determining the sale price based on the generated measure of flexibility. Applicants respectfully submit that Tagawa does not teach or suggest such a feature.

With respect to the Section 103(a) rejections of Claims 46-48, Applicants maintain the arguments provided in the Appeal Brief.

For at least the reasons provided in this paper, Applicants respectfully submit that no prima facie case of anticipation or obviousness has been established for any of the rejected and appealed claims (Claims 31-33, 36-40 and 43-50). Applicants request the Examiner reconsider and withdraw the Section 102(e) and 103(a) rejections of those claims.

E. ADDITIONAL COMMENTS

Our silence with respect to the Examiner's other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, the Examiner's interpretation of claimed subject matter or the Specification, or the propriety of any asserted combination(s) of teachings, is not to be understood as agreement with the Examiner. As the Examiner has not established an un rebuttable prima facie case for rejecting any of the claims as pending, for at least the reasons stated in this paper, we need not address all of the Examiner's assertions at this time. Also, the absence of

arguments for patentability other than those presented in this paper should not be construed as either a disclaimer of such arguments or as an indication that such arguments are not believed to be meritorious.

F. PETITION FOR EXTENSION OF TIME TO RESPOND & AUTHORIZATION TO CHARGE APPROPRIATE FEES

We do not believe that any fees are necessary for this response.

Please grant a petition for any extension of time required to make this Response timely. Please also charge any other appropriate fees set forth in 37 C.F.R. §§ 1.16 – 1.18 for this paper and for any accompanying papers to:

Deposit Account: 50-0271

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Please credit any overpayment to the same account.

G. CONCLUSION

It is submitted that all of the claims are in condition for allowance. The Examiner's consideration is respectfully requested.

If the Examiner has any questions regarding this paper or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

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Date

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